

HUMAN SERVICES BOARD

INTRODUCTION

¹ Petitioner is aggrieved by the actions of the Vermont Department of Education and local school district. Petitioner agrees that the Board does not have jurisdiction over either entity.

Background

Before addressing the legal argument, the petitioner's complaint will be summarized.

1. Failure to substantiate. On or about November 22, 2004, the Social and Rehabilitation Services (SRS)² office logged a child abuse intake regarding an educator's conduct with petitioner's daughter. SRS did not accept the intake as neglect/abuse on that same date.

Petitioner met with the DCF Commissioner during January 2008. On or about January 31, 2008, the DCF Commissioner wrote to petitioner and explained that his department was correct in not investigating the 2004 report of abuse/neglect because the alleged behavior did not fall within statutory definitions for abuse. In a letter dated February 28, 2008 to petitioner, the AHS Secretary agreed with the DCF Commissioner's assessment.

2. Failure to provide services for a crime victim. Petitioner's daughter was a victim of a cyber hate crime by two juveniles during the 2004-2005 school year. The juveniles were prosecuted. Petitioner has been unhappy about referrals and services including the response of the Vermont

²As part of the AHS reorganization, SRS was renamed the Family Services Division of the Department for Children and Families.

Center for Crime Victim Services. The petitioner's follow-up has included complaints to the AHS Secretary about the services her daughter and family have received as crime victims.

DISCUSSION

The Agency and the Department have filed a motion to dismiss based on lack of jurisdiction or failure to state a cause of action, and lack of timeliness. In addition, they include a claim that the Board does not have jurisdiction over AHS. To determine the merits of the Agency and Department motion, we need to look at the jurisdiction that the Legislature has conferred upon the Board.

The main grant of authority to the Board is found at 3 V.S.A. § 3091(a) which states:

An applicant for or a recipient of assistance, benefits, or social services from the department for children and families, the office of Vermont health access, and the department of disabilities, aging, and independent living, the department of mental health, or an applicant for a license from one of those departments or offices, or a licensee, may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by agency policy as it affects his or her situation.

The genesis of the Legislature's action is the holding in Goldberg v. Kelly, 397 U.S. 254 (1970) that welfare recipients have a property interest in their benefits and that the state could not reduce or terminate benefits without due process of law that included a "fair hearing".

A review of the Board's decisions indicates that many Board cases involve decisions impacting on an individual's eligibility, amount of benefits or services (e.g. number of therapy sessions under the Medicaid program or the specifics of a Family Development Plan under the RUFA program), or termination of benefits or services in a wide variety of programs that fall under the heading of welfare programs (e.g. Food Stamps, Medicaid, General Assistance, Reach Up Financial Assistance).³

In these cases, time is of the essence and Fair Hearing Rule No. 1 provides:

Appeals from decisions by the Department of Social Welfare and the Office of Child Support shall not be considered by the board unless the appellant has either mailed a request for fair hearing or clearly indicated that he or she wishes to present his or her case to a higher authority within 90 days from the date when his

³ In addition, actions to deny, list program violations, or revoke a license implicate property rights. The Board reviews these cases involving decisions by DCF (e.g. foster parent, childcare center) or DAIL (e.g. nursing home, residential care home).

or her grievance arose. In food stamp cases, a household may also request a fair hearing at any time within a certification period to dispute its current level of benefits. All other appeals must be made within 30 days from the date the grievance arose, unless otherwise provided by statute.

In addition to 3 V.S.A. § 3091(a), the Legislature has specifically granted jurisdiction to the Board in certain situations such as review under the Developmental Disabilities Act, 18 V.S.A. § 8727; Catamount, 33 V.S.A. § 1974, or review of child abuse substantiations, 33 V.S.A. § 4916b.

Petitioner is unhappy with DCF's decision not to investigate the November 22, 2004 intake of abuse. The statutory sections for reporting of abuse are found at 33 V.S.A. §§ 4911 *et seq.* The statute gives DCF discretion whether to accept a case for investigation (to decide whether the allegations rise to the level of the statutory definitions of abuse or neglect that would trigger an investigation). 33 V.S.A. §§ 4912 and 4915. The statute does not specifically provide access to a fair hearing by a person dissatisfied with a decision not to investigate a child abuse allegation; there is no indication that the Legislature wanted the Board to have this type of review function. In fact, the only references to a fair hearing are

the sections allowing a person facing substantiation to challenge placement on the child abuse registry and allowing a person on the registry to challenge a decision not to expunge his/her placement on the child abuse registry. 33 V.S.A. §§ 4916b and 4916c.

Petitioner is also unhappy with AHS's and DCF's response to her grievances regarding the type and range of services her family has received as crime victims.

Once again, the Board's authorizing statutes do not contemplate fair hearings for grievances arising from actions ancillary to the criminal justice system. The legislature has addressed the needs of crime victims through 13 V.S.A. §§ 5301 *et seq.* (addressing the treatment of crime victims during the criminal process and remedies to reduce financial and emotional harm) and 33 V.S.A. §§ 5351 *et seq.* (powers of the victims compensation board, etc.). The agencies or groups charged under these statutes are not included within the departments enumerated in the Board's enabling statute.

In terms of DCF, their services under the child abuse reporting statute, *supra*, are not triggered unless there has been an investigation with findings that the child has been abused or neglected. 33 V.S.A. § 4915(c). This case never rose to that level.

The Board is bound by the provisions of its enabling statute and other powers specifically enumerated by the Legislature. Fair Hearing Nos. 19,550; 19,100; and 21,170. The Board does not have jurisdiction to hear petitioner's claims.

Because the Board does not have jurisdiction, there is no necessity to reach the issue of timeliness.

The Board declines to reach the question whether 3 V.S.A. § 3091(a) allows fair hearings to be brought against AHS since AHS is not specifically mentioned in that portion of the statute since the case is being dismissed on other jurisdictional grounds.⁴

ORDER

The petitioner's request for fair hearing is dismissed.

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⁴ It should be noted that the departments listed in 3 V.S.A. § 3091(a) are constituent parts of AHS and that the Secretary has specific powers to reverse the Board in certain types of cases pursuant to 3 V.S.A. § 3091(h). To fully analyze this argument is not necessary at this time.